

### **REMARKS**

Claims 17-21 are allowed. Claims 12 and 13 are objected to, but would be allowed if rewritten in independent form. Claims 1-11, 14 and 16 are pending and remain in the application. Independent claims 1 and 14 have been amended to include the limitation of a fixed actuator plate disposed upon the semiconductor substrate. The support for this amendment can be found in the Detailed Description section of the current application at page 11, lines 1-5. Independent claim 9 has been amended to include the limitation of a fixed actuator plate disposed upon the semiconductor substrate, and to include the limitation of a flexible section. The support for this amendment can be found in the Detailed Description section of the current application at page 8, lines 20-21.

Dependent claim 10 has been amended to include the limitations of a flexible dielectric layer capable of suspending the moveable charge plate. Support for this amendment can be found in the Detailed Description section of the current application at page 8 lines 16-18. Dependent claim 11 has been amended to include the limitation of the flexible section being capable of suspending the movable charge plate. The support for this amendment can be found in the Detailed Description section of the current application at page 8, lines 20-21. Dependent claim 12 has been amended to include the limitation of the fixed actuator plate being capable of moving the moveable charge plate. The support for this amendment can be found in the Detailed Description section of the current application at page 11, lines 6-9. Dependent claim 13 has been amended to include the limitation of a moveable actuator plate capable of moving the moveable charge plate. The support for this amendment can be found in the Detailed Description

section of the current application at page 12, lines 7-14. No new subject matter has been added with these amendments.

A. 35 U.S.C. § 102(b)

Muller - Claims 1- 9 and 11

Claims 1-9 and 11 of the parent application stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,674,319 issued June 23, 1987 to Richard S. Muller, (hereinafter "the Muller patent") (Office Action, pages 2). For at least the reasons set forth below, Applicants submit that claims 1-9 and 11 are not anticipated by the Mann patent.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Regarding claims 1-8, independent claim 1 has been amended to add the limitation of a fixed actuator plate disposed upon the semiconductor substrate. The support for this amendment can be found in the Detailed Description section of the current application at page 11, lines 1-5. The Official Action at page 2 states that the Muller patent teaches a "fixed charge plate, a moveable charge plate and a stiffener." However, the Muller patent does not disclose the limitation of a fixed actuator plate disposed upon the silicon substrate, as disclosed in the amended claim 1 of the present

invention. Therefore, since the Mann patent does not teach or disclose all of the limitations of claim 1 of the present invention, claim 1 is not anticipated by the Mann patent.

In addition, since dependent claims include all of the limitations of the independent claims from which they depend, claims 2-8, which depends from claim 1, are not anticipated by the Mann patent. Therefore, reconsideration and withdrawal of the Section 102(b) rejection of claims 1-8 are respectfully requested.

Regarding claims 9 and 11, independent claim 9 has been amended to add the limitation of a fixed actuator plate disposed upon the semiconductor substrate. The Official Action at page 2 states that the Muller patent teaches a "means for moving the moveable plate". However, the Muller patent does not disclose the limitation of a fixed actuator plate disposed upon the silicon substrate, as in the amended claim 9 of the present invention. Therefore, since the Mann patent does not teach or disclose a fixed actuator plate disposed upon the silicon substrate, claim 9, and claim 11 which depends from claim 9, are not anticipated by the Mann patent. Therefore, reconsideration and withdrawal of the Section 102(b) rejection of claims 9 and 11 are respectfully requested.

B. 35 U.S.C. § 103(a)

Muller in view of Miller - Claims 1, 14 and 16

Claims 1, 14, and 16 of the parent application stand rejected under 35 U.S.C. § 103(a) as being obvious over the Muller patent in view of the U.S. patent No. 5,185,690

issued February 9, 1993 to Mark L. Miller (hereinafter "the Miller patent") (Office Action, pages 3).

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

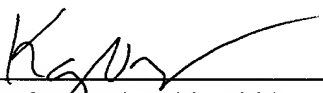
Regarding claim 10, the Office contends that "it would have been obvious to use the flexible dielectric layer of Miller as the suspension structure of Muller." (Office Action at page 3). However, neither the Miller patent nor the Muller patent, either alone or in combination, teach or suggest a fixed actuator plate disposed on a silicon substrate, as is disclosed in the amended claim 9 of the present invention, from which claim 10 depends. Therefore, because neither the Miller patent nor the Muller patent teach or suggest all of the limitations of amended claim 9, from which claim 10 depends, claim 10 is not rendered obvious over the Muller patent in view of the Miller patent.

Regarding claims 14 and 16, the Office contends that "it would have been obvious to use the flexible dielectric layer of Miller to change the capacity of the capacitor of Muller." (Office Action at page 4). However, neither the Miller patent nor the Muller patent, either alone or in combination, teach or suggest a fixed actuator plate disposed on a silicon substrate, as is disclosed in the amended claim 14 of the present

invention, from which claim 16 depends. Therefore, because neither the Miller patent nor the Muller patent teach or suggest all of the limitations of amended claim 14, from which claim 16 depends, claims 14 and 16 are not rendered obvious over the Muller patent in view of the Miller patent. Therefore, reconsideration and withdrawal of the Section 103(a) rejection of claims 10, 14 and 16 are respectfully requested.

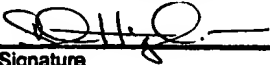
In view of the foregoing remarks, the Applicants request allowance of the application. Please forward further communications to the address of record. If the Examiner needs to contact the below-signed agent to further the prosecution of the application, the contact number is (503) 264-0944.

Respectfully submitted,

  
Dated: September 29, 2003

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